Supreme Court, U.S.
FILED
95-52 MAY 31 1995
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NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

BARBARA JOHNS

Petitioner,

vs.

WARE COUNTY BOARD OF COMMISSIONERS
and
GAB BUSINESS SERVICES, INC.

Respondents,

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT FROM THE SUPERIOR COURT OF WARE COUNTY, GEORGIA

PETITION FOR WRIT OF CERTIORARI

FRED R. KOPP
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(912) 632-6812

QUESTIONS PRESENTED

(1) Is it arbitrary and irrational to distinguish between psychological injuries preceded by physical injury or injuries which are purely physical and psychological injuries not preceded by a physical injury and therefore a violation of due process?

(2) Is it a violation of equal protection to deny benefits to a class of claimants whose mental injuries are not accompanied by a physical injury while awarding benefits to a class of claimants whose injuries are either physical or who have the same mental impairments but with a physical injury accompanying them?

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Petitioner, BARBARA JOHNS, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of the State of Georgia in refusing a discretionary appeal and the court below, who ruled that in Georgia purely psychological injuries caused by the job are not compensable as an occupational disease or illness or as an accidental injury or otherwise under the Workers' Compensation laws for the State of Georgia.

OPINIONS BELOW

The opinion of the Supreme Court of the State of Georgia has refused discretionary appeal to hear this case. The Order refusing to hear this appeal is attached as Appendix A to this Petition. The Order of the Superior Court of Ware County, Georgia, affirming the opinion of the Full Board of the Workers'

Compensation Board for the State of Georgia, which affirmed the opinion of the Administrative Law Judge are also attached as Appendix B and Appendix C to this Petition. The opinion of the Administrative Law Judge is attached as Appendix D. These opinions are unpublished. The Supreme Court of the State of Georgia issued an order on March 9, 1995, refusing the application of Barbara Johns for discretionary appeal.

JURISDICTION

This court's jurisdiction is invoked under Title 28 U.S.C. Section 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment XIV to the United States Constitution is set forth in Appendix E.

STATEMENT OF THE CASE

This is an appeal from a decision of the Workers' Compensation Court for the State of Georgia, which ruled that claims for psychological injuries or illnesses caused by mental stress at the workplace are not compensable unless caused by a or accompanied with a discernible physical occurrence. The Administrative Law Judge merely held that the class of people in Georgia who are injured in the workplace by physical injury followed by a psychological injury or illness may receive Workers' Compensation. Those who have purely physical injuries may receive compensation, while those who suffer debilitating psychological injuries because of the stress from the workplace may not receive compensation in the State of Georgia, either under case law as an accidental injury arising out of the job

or as an occupational illness. See generally O.C.G.A. Section 34-9-1(4); Owens-Illinois, Inc. v. Douglas, 151 Ga. App. 408; 260 S.E.2d 509 (1979); and O.C.G.A. Section 34-9-280.

The Full Board of the State Board of Workers' Compensation Court for the State of Georgia upheld this decision as did the Superior Court of Ware County, Georgia. The Supreme Court for the State of Georgia denied discretionary appeal.

REASONS FOR GRANTING THE WRIT

Certiorari should granted in this case, because different states have different rules about these issues, (See 97 ALR 3d 161) and this case presents questions whose resolutions will have immediate importance far beyond the particular facts and parties involved in this case. The case of Barbara Johns involves extremely important principles,

which affect the plans, hopes, and lives of a great many people throughout our nation. Psychology, or the study and science of the mind, is no longer at such a primitive stage that it must be ignored. Stress is being linked to many physical and psychological illnesses as more and more is learned about stress and how it affects the human body. It is absolutely ridiculous to treat a class of people who receive a physical injury on the job or a mental injury accompanied with a physical injury in a favorable manner and to deny Workers' Compensation coverage to a class of people who, because of stress on the job, suffer a psychological injury. This distinction is made upon antiquated reasoning and misunderstanding of emotional and mental trauma. These distinctions are arbitrary and irrational. This distinction denies due process to claimants who suffer mental damages caused by psychic injuries or stress on the job.

If there is not a fair and substantial relationship between the classification and a purpose of law, then the classification must be arbitrary and unreasonable and must be stricken. Reed v. Reed, 404 U.S. 71 (1971).

CONCLUSION

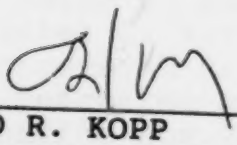
Therefore, the Petitioner, BARBARA JOHNS, states a very compelling case for granting her Writ of Certiorari. This distinction no longer serves the purpose for which it was created. Certainly, it can be no more difficult to diagnose a malingering Claimant who claims to have a back injury than it would be a malingering Claimant who claims to have a psychological injury. The law, as it currently exists, makes no sense. Moreover, there seems to be about an even split between the states who follow this antiquated reasoning with states which

treat psychological injuries as compensable.

WHEREFORE, the Petitioner, BARBARA JOHNS, shows that her Writ should be granted, and this matter should be heard.

Respectfully submitted,

FRED R. KOPP, P.C.



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CERTIFICATE OF SERVICE

This is to certify that I have this day served a true and correct copy of the attached and foregoing **PETITION FOR WRIT OF CERTIORARI** with attached Appendices upon:

Ms. Julie Y. John
Mr. Daniel C. Kniffen
Attorneys at Law
880 W. Peachtree Street
Post Office Box 7600
Atlanta, Georgia 30357-7600

by mailing same to them by United States Mail, in a properly addressed envelope, with sufficient postage affixed thereto.

This 25 day of May, 1995.

FRED R. KOPP

APPENDIX A

SUPREME COURT OF GEORGIA

Case No. S95D0772 Atlanta, March 9, 1995

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

BARBARA JOHNS V. WARE COUNTY BOARD OF COMMISSIONERS et al.

From the Superior Court of WARE County.

Upon consideration of this Application for Discretionary Appeal, it is ordered that it is hereby denied.

ALL the Justices concur.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

_____

Chief Deputy Clerk

SEAL

APPENDIX B

IN THE SUPERIOR COURT OF WARE COUNTY
STATE OF GEORGIA

Barbara P. Johns, Claimant,	)	CIVIL ACTION FILE NO. 94-V-1144
vs.	)	CLAIM #264-56-4359
Ware County Board of Commissioners, Employer/Self-Insurer, and GAB Business Services, Inc., Servicing Agent.	)	D/A: 09/12/93

ORDER

The above-styled action, having come before this Court, and after reviewing the transcript of proceedings before the State Board of Workers' Compensation and briefs submitted by both parties, this Court finds that there is evidence to substantiate the findings and decisions of the State Board of Workers' Compensation dated December 6, 1994 and that decision does not comply with the law and should be affirmed.

Therefore, it is hereby ordered that the Award of the State Board of Workers' Compensation dated December 6, 1994 is hereby affirmed.

IT IS SO ORDERED, this ____ day of _____, 1995.

s/JOSEPH B. NEWTON
JUDGE, SUPERIOR COURT OF
WARE COUNTY

APPENDIX C

STATE BOARD OF WORKERS' COMPENSATION
Suite 1000, South Tower
One CNN Center
Atlanta, Georgia 30303-2788

Claim #264-56-4359 Case of: Barbara P. Johns
DOA: 09/12/93 Date: 12/06/94

Barbara P. Johns 1560 Connors Road Waycross, GA 31503	Employee/Claimant
Ware County Board of Commissioners P. O. Box 1069 Waycross, GA 31502	Employer/Self-Insurer
Association of County Commissioners of Georgia c/o GAB Business Services, Incorporated P. O. Box 81788 Atlanta, GA 30366	Servicing Agent
Fred R. Kopp P. O. Box 785 Alma, GA 31510	Counsel for Employee
Julie Y. John P. O. Box 7600 Atlanta, GA 30357-0600	Counsel for Employer/ Self-Insurer

This claim is before the Appellate Division for review of the award of Judge Bohler of the Trial Division, dated July 29, 1994.

Upon de novo consideration of all evidence,

the Appellate Division makes the findings and conclusions of the administrative law judge its findings of fact and conclusion of law.

AWARD

The award of Judge Bohler, dated July 29, 1994, is made the award of the Appellate Division.

IT IS SO ORDERED, this the 6th day of December, 1994.

Concurring: Judge Don L. Knowles and Judge M. Yvette Miller

STATE BOARD OF WORKERS' COMPENSATION

_____

HARRILL L. DAWKINS
Presiding Judge
Appellate Division

STATE BOARD OF WORKERS' COMPENSATION
Suite 1000, South Tower
One CNN Center
Atlanta, Georgia 30303-2788

Claim #264-56-4359 Case of: Barbara P. Johns
DOA: 09/12/93 Date: 07/29/94

Barbara P. Johns 1560 Connors Road Waycross, GA 31503	Employee/Claimant
Ware County Board of Commissioners P. O. Box 1069 Waycross, GA 31502	Employer/Self-Insurer
Association of County Commissioners of Georgia c/o GAB Business Services, Incorporated P. O. Box 81788 Atlanta, GA 30366	Servicing Agent
Fred R. Kopp P. O. Box 785 Alma, GA 31510	Counsel for Employee
Daniel C. Kniffen Julie Y. John P. O. Box 7600 Atlanta, GA 30357-0600	Counsel for Employer Self-Insurer

This claim was scheduled for hearing on April 11, 1994. The parties agreed to submit stipulated facts and briefs for the administrative law judge to determine whether

the employee's claim for psychological injuries which were not precipitated by a physical injury were compensable as (1) an injury arising out of and in the course of employment or (2) an occupational disease. The parties stipulate to the following:

STIPULATED FACTS

1. The parties agree that jurisdiction and venue are proper, the employee was in the general employ of the employer/self-insurer on September 12, 1993, the parties are subject to the Workers' Compensation Act, and the correct average weekly wage is $310.00.

2. The employee began working for Ware County as a 911 dispatcher in December, 1988.

3. The employee is one of two 911 operators per shift. During the course of her employment with Ware County, her shift has varied from working the midnight shift to the day shift.

4. On September 12, 1993 when the employee

reported to work, she learned that there had been a change in her schedule for the following date. The employee became very upset, contacted her supervisor, Sergeant Cooper, and immediately left work. The employee did not sustain any physical injury on September 12, 1993 or anytime prior to that date while on the job.

5. On September 13, 1993, the employee went to her personal physician at Waycross Family Practice complaining of nervousness and stress at the job.

6. The employee was referred to Satilla Park Hospital on September 18, 1993 and continued to obtain follow-up care on an out-patient basis with Dr. Green. Dr. Green ultimately released the employee to return to her normal work duty as a 911 operator on October 26, 1993. The employee did return to work on that date, performing her regular duties as a 911 operator, and has continued to perform her

work without missing any time.

8. The employee requested a hearing on November 3, 1993 claiming indemnity benefits from September 12, 1993 through October 26, 1993, payment of medical bills to Satilla Park Hospital and Dr. Patricia Green, and assessed attorney's fees, alleging "no workers compensation benefits were provided, although it is obvious that this was an on-job occupational injury resulting from stress of the job."

9. The employee contends that the constant schedule changes with her job on a last-minute basis caused extreme stress, particularly since she was unable to make any plans. The employee contends that the job of a 911 operator is stressful; however, she admits that the scheduling aspect of the job caused the most stress and that making quick decisions did not necessarily affect her.

10. The parties agree that the employee did

not sustain any physical injury on September 12, 1993 or while working for the employer/self-insurer. Instead, the employee's entire claim is for the payment of benefits and medical expenses relating to a psychological injury resulting from stress on the job.

11. The employer/self-insurer has controverted this claim on the basis that the employee did not sustain any physical injury associated with her psychological claim.

12. All medical records of Waycross Family Practice Center, Satilla Park Hospital and Dr. Patricia Green were submitted into evidence by agreement as Joint Exhibits 1, 2 and 3, respectively, and the deposition of the employee was submitted in to evidence as Joint Exhibit 4.

The issue to be determined is whether the employee's disability from September 13, 1993 to October 26, 1993 for major depression and

nervousness and the medical bills incurred as a result of her major depression and nervousness are compensable either as injury by accident arising out of and in the course of employment or as an occupational disease. Based upon the facts as stipulated by the parties, the deposition and the medical records submitted and after consideration of the briefs by counsel and the existing statutory and case law, I make the following findings and conclusions:

CONCLUSIONS

1. The current law in this state holds that a claim for mental stress is not compensable unless it was caused by a "discernible physical occurrence". Hanson Buick V. Chatham, 163 Ga. App. 127, 292 SE2d 428 (1982) and W. W. Fowler Oil Company V. Hamby, 192 Ga. App. 422, 385 SE2d 106 (1989). The parties have stipulated that the employee did not suffer any physical injury and that her claims

are purely psychological. Therefore, under Georgia law, the employee has not suffered an injury by accident arising out of and in the course of her employment and her claim is barred.

2. I further find that the employee's depression and nervousness are not compensable as an occupational disease because her condition does not meet the requirements of O.C.G.A. 34-9-280. Specifically, depression and nervousness is "an ordinary disease of life to which the general public is exposed" which excludes it from the occupational disease statute. O.C.G.A. 34-9-280(c).

3. The employee argues that the time has come for a change in law and raises several constitutional challenges to the current Georgia law. This judge cannot ignore the statutory and case law in this state nor find that law unconstitutional. Decisions as to constitutionality are for higher courts to

determine. This court is bound by the current law in this state which holds that this claim for psychological injury without a physical injury cannot be compensable.

AWARD

Based upon the foregoing stipulated facts and conclusions of law, the employee's claim for workers' compensation benefits is hereby denied.

IT IS SO ORDERED, this July 29, 1994

STATE BOARD OF WORKERS' COMPENSATION

LEESA A. BOHLER
Administrative Law Judge

You have the right to appeal an award of an administrative law judge within 20 days of the date of that award. If you wish to do so, you must send a written notice of appeal to:

State Board of Workers' Compensation
Suite 1000-South Tower, One CNN Center
Atlanta, GA 30303-2788

The part of Board Rule 103 which contains the proper procedure for an appeal is as follows:

(a) The time for application for review commences on the date shown on the notice of award and is computed as in paragraph (3) of subsection (d) of O.C.G.A. 1-3-1.

(b) Appearance before the three-member board shall be by brief only unless a request for oral argument is made at the time the application for review is filed. Within 10 days from the date of the certificate of service on the application for review, the appellee may request oral argument. Where oral

argument has been requested, all parties may appear for oral argument. Oral argument shall be limited to five minutes for each party.

(1) The party applying for review shall serve a copy of the application for review upon all opposing parties. The party requesting review shall have 20 days from the date shown on the certificate of service of the application for review in which to file a brief along with three copies of the award of the administrative law judge. The party requesting the review shall certify that a copy of the brief was served in person or by mail to all opposing parties on the date the brief is submitted to the board. Opposing parties shall then have 20 days from the date of appellant's certificate of service to file reply briefs with the

board. Briefs not filed in conformity with this rule will not be accepted except by permission of the board. Upon application for oral argument, the party making the application shall file with the board six copies of the award of the administrative law judge, including all amendments, for which the review is requested. The case will not be scheduled on a calendar unless these copies are enclosed.

(2) Briefs shall generally follow the format required by the appellate courts. Only the original of the brief is required to be filed with the board.

(c) On its own motion or the motion of any party, the board may remand the case to an administrative law judge for the purpose of receiving additional evidence or making additional findings of fact.

APPENDIX E

AMENDMENT XIV - CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Materials for the Citizenship and Privileges and Immunities Clauses of Section 1 are set out in this volume. See the following three volumes for materials pertaining to the Due Process and Equal Protection Clauses of that section and Sections 2 to 5.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within it jurisdiction the equal protection of the

laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall

not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.